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THE AMERICAN ASSOCIATION
OF UNIVERSITY PROFESSORS

REPORT

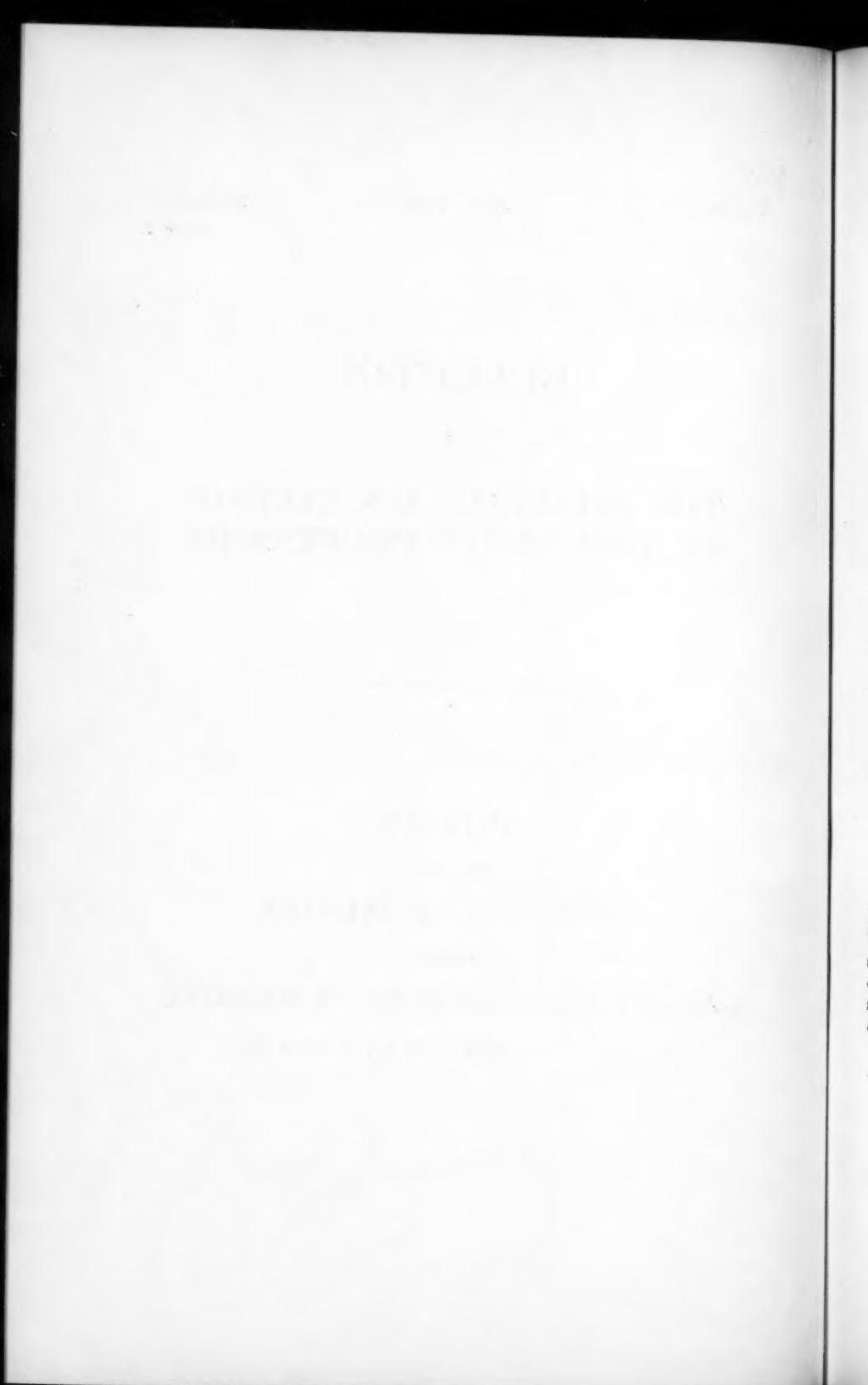
OF THE

COMMITTEE OF INQUIRY

ON THE

CASE OF PROFESSOR SCOTT NEARING

OF THE UNIVERSITY OF PENNSYLVANIA

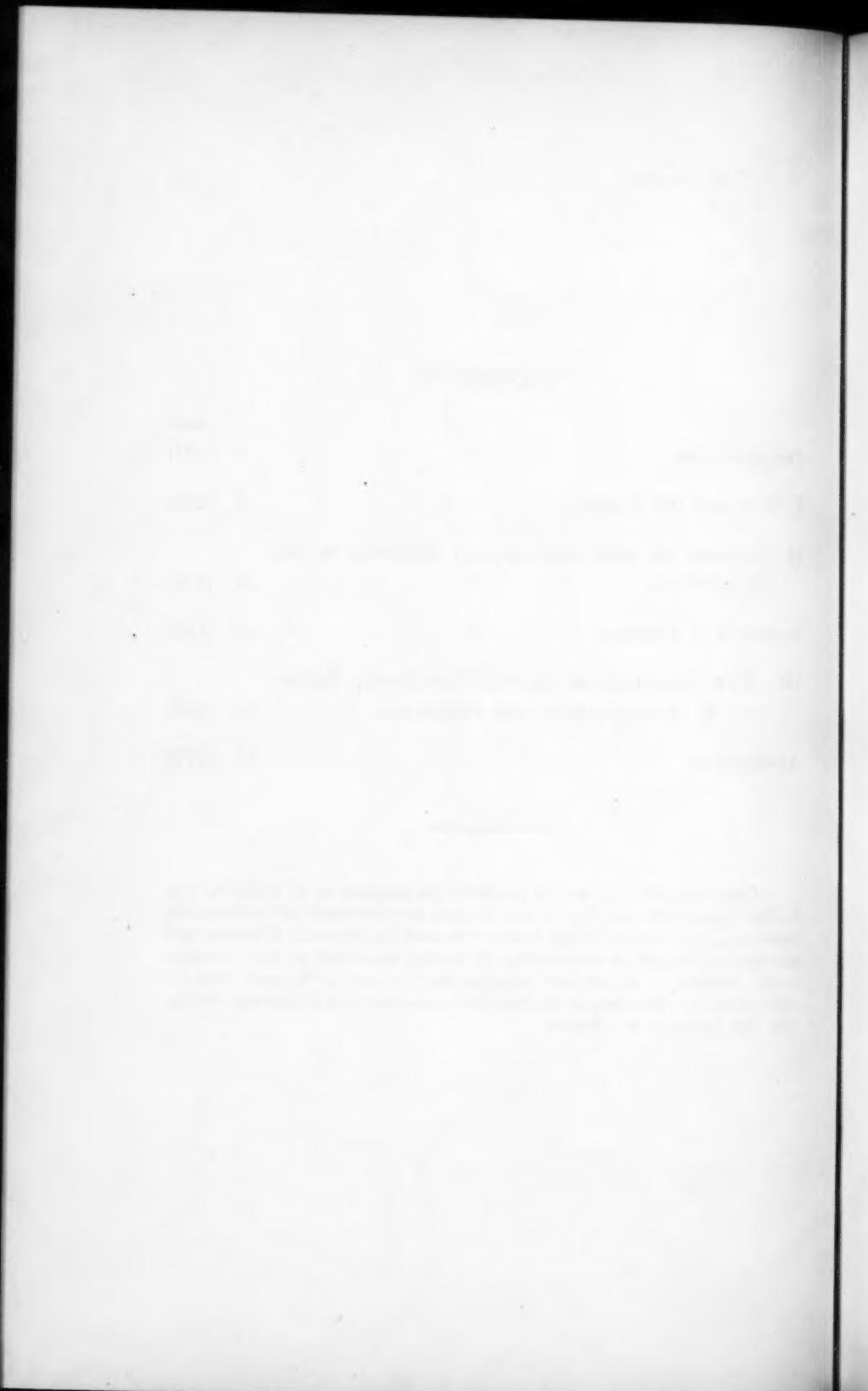


Mr
Prof E. C. Case
5-8-28

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Page numbers in brackets continue the pagination of *Bulletin*, Vol. I, No. 1, and Vol. II, No. 2, Part 2, and are designed to facilitate the binding in one volume of the General Report on Academic Freedom and subsequent reports of committees of inquiry appointed in 1915. Copies of the *Bulletin* or of separate reports may be had at 25 cents each by addressing the *Secretary of the American Association of University Profes-
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**REPORT OF THE COMMITTEE
OF INQUIRY**

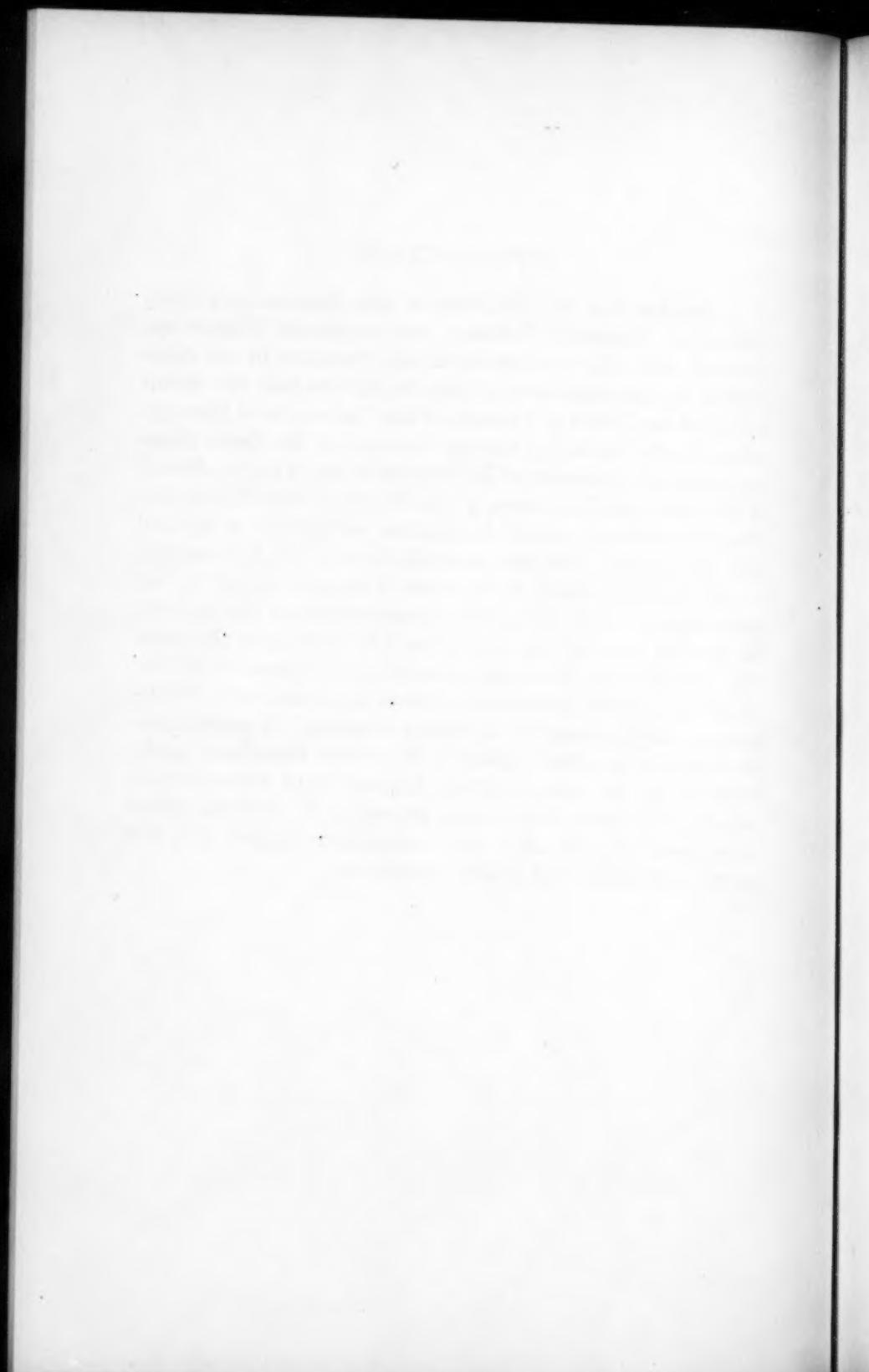
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1. *Trichilia* (L.) *hirsutiflora*
2. *Trichilia* (L.) *hirsutiflora*
3. *Trichilia* (L.) *hirsutiflora*

INTRODUCTION

In October last the chairman of this Association's Committee on Academic Freedom and Academic Tenure appointed, with the concurrence of the President of the Association, a sub-committee of five to inquire into the recent action of the Board of Trustees of the University of Pennsylvania, in discontinuing the appointment of Dr. Scott Nearing, assistant professor of Economics in the Wharton School of Finance and Commerce, a department of that University. The committee's report, hereinafter submitted, is divided into two parts. The first presents those *prima facie* aspects of the incident which have made it appear to call for an investigation by a committee representative of this society; the second presents the committee's findings upon the question whether the determining causes of the removal of Mr. Nearing and the procedure followed were such as to constitute an infringement of academic freedom. A supplementary section is added, referring to certain important modifications in the statutes of the University of Pennsylvania relating to tenure of office and procedure in removal, which have been adopted since the committee's inquiry into the original incident was nearly completed.



I

Dr. Nearing had, at the close of the academic year 1914-1915, been for nine years in the service of the University of Pennsylvania. His first appointment, in 1906, was as assistant instructor; from 1907 to June, 1914, he held the rank of instructor; in the latter year he was promoted to an assistant professorship. The letter informing him of this appointment read as follows:

MY DEAR SIR:

It gives me pleasure to inform you that you have been elected to an Assistant Professorship in the University of Pennsylvania for the year 1914-15. Salary at the rate of —— *per annum*.

Truly yours,
EDWARD ROBINS, *Secretary.*

"Appointments other than those of Professors and Assistant Professors shall be for one year. The appointment of Assistant Professors shall be for a term of from one to three years." Statutes, Sec. 27 (b).

One member of the Board of Trustees has stated that this appointment of Dr. Nearing was under the circumstances virtually an appointment on probation. The committee is unable to state whether this was the understanding of other trustees. There was nothing in the form or in the term of the appointment to imply that it was of a probationary character. The committee is informed by the Dean of the Wharton School that, so far as he is aware, all instructors and assistant professors in the School, after 1913, received "letters of appointment and reappointment containing a footnote specifying the term of office;" and that his impression is that all assistant professors reappointed in 1914 re-

ceived notice of one-year terms. Dr. Nearing answers in the negative the following question from the committee: "Did you at the time of your last appointment, receive any official intimation that your previous conduct as a member of the faculty was objected to by the Provost, or the Board of Trustees, and that your new appointment was to be regarded as probationary?" The committee concludes, for these reasons, that Dr. Nearing's status during the academic year 1914-15 was that of an assistant professor in regular standing.

In the spring of the year 1914-15 Dr. Nearing was recommended for reappointment by the head of his department, Professor Simon N. Patten, and by the Dean of the Wharton School, Professor R. C. McCrea, with the known concurrence of the majority of the faculty of the School.* The Board of Trustees, however, on June 14 took action of which Dr. Nearing was informed by the following notice from the Provost of the University, Dr. Edgar Fahs Smith:

As the term of your appointment as Assistant Professor of Economics is about to expire, I am directed by the Trustees of the University of Pennsylvania to inform you that it will not be renewed.

Since this action of the trustees was, in form, not a removal from office, but merely a decision not to renew an appointment which had expired, it has been contended by some that it was an entirely normal and legitimate exercise of the power vested in the Trustees to decide as to reappointments; that the case, therefore, on its face, involves no infringement of academic freedom, and no violation of the accepted rules as to tenure of office in universities; and that it consequently is not of a character to call for investigation by this Association. This initial demurrer could be accepted by your committee, if two conditions were fulfilled:

*See Appendix A.

(1) if it had been well understood that assistant professorships at the University of Pennsylvania carried with them no presumption of reappointment; and (2) if there had been no *prima facie* grounds for the charge that the reason for the determination of the trustees not to renew Dr. Nearing's appointment lay in the character of his utterances upon economic and social questions. It is evident that the question of freedom of teaching *may* be not less vitally involved in cases of the refusal of reappointment than in cases of removal of university teachers appointed for indefinite terms. If a continuance in office which he might otherwise expect to enjoy is refused a teacher because of objections to his opinions, or his public expressions of opinion, it makes little practical difference, so far as the injury to academic freedom is concerned, whether the result is called 'non-reappointment,' or 'removal,' or 'dismissal.' Your committee does not find that either of the conditions specified was realized in the case of the denial of reappointment to Dr. Nearing.

(1) The Committee is informed by Provost Smith (October 27, 1915) in reply to questions, that in the practice of the University, "there is a presumption of reappointment" (of assistant professors), "in case of satisfactory service;" that "there have been, during the administration of the present Provost, no cases, other than that of Dr. Nearing, in which assistant professors, recommended for reappointment by the Dean and faculty of the School in which they taught, have failed of reappointment;" and that "it may be assumed that, when an assistant professor is so recommended, it will only be in rare and exceptional cases that reappointment is refused." One of the members of the Board of Trustees longest in service has stated that, so far as he can recall, such a recommendation of the faculty of a school has never before been rejected by the Board or its Committee on Appointments. It is evident, therefore, that the action taken with reference to Dr. Nearing by the Board

of Trustees on June 14 was no routine matter, but was of a wholly exceptional character, and did not in its practical significance differ from a dismissal.*

(2) The facts which give *prima facie* grounds for the belief that the issue of freedom of teaching is involved in the case—and which have therefore made it appear necessary that an investigation be made—are the following:

a. The action of the Board was a rejection of the recommendation of the Dean of the Wharton School, and of the head of the department of economics, and was in opposition to what was reported by the Dean to be the judgment of the faculty of the department and of the School. This appears to your committee to be one of the capital circumstances of the case. The fact that such recommendations were made absolves the committee from the necessity of inquiring on its own account as to the professional qualifications of Dr. Nearing and the character of his work in the University of Pennsylvania. Those in the best position to judge upon these points were his own colleagues in the Wharton School and his immediate official superiors, who were also specialists in his own department of knowledge. The latter have strongly testified as to his general competency, his exceptional teaching ability, and also his special usefulness in administrative duties, and in the maintenance of student discipline. It seems clear, however, that the official commendation of Dr. Nearing by the Dean of his school was not unqualified; that in a conference with the sub-committee of the trustees on the Wharton School, Dean McCrea conceded that Dr. Nearing was "impulsive" and had "not been so tactful as he might be;" and that the Dean further, in reply to the question of a trustee whether Dr. Nearing was not wanting in "professorial gumption," answered: "I think that is about it." From the evidence relating to this con-

*This consideration explains the use of the words "dismissal" and "removal" in this report.

ference* it would appear that it was possible for the trustees attending it to gain the impression that the Dean regarded Mr. Nearing as open to serious criticism in certain respects; and that at least three out of the four trustees present did gain this impression. It is nevertheless the case that, upon a summing up of merits and demerits, the opinion of Dr. Nearing officially expressed by the heads both of his department and his School was decidedly favorable, and that the recommendation for reappointment was explicit. It is the opinion of your committee that such recommendation from the responsible and accredited representatives of the educational staff of a university—especially when, as in this case, no question of moral unworthiness or neglect of duty is involved—should be disregarded by governing boards of laymen only on grave occasions, and after definite charges have been brought against the teachers concerned, and opportunity for judicial hearings has been afforded; and that the grounds for removal should be clearly stated, and communicated to the faculties concerned. Summary action in such cases, and in circumstances such as attended the action of the Pennsylvania trustees, is not directed solely or most significantly, against the individual teacher affected; it is directed also against the local faculty as a body, and against the academic profession at large. For it is an instance of lay intervention in what is essentially a professional question. Such intervention is expedient only upon the most serious and exceptional grounds; and when it occurs, cogent evidence of the existence of such grounds should be afforded. In the present instance no explanation of any sort was offered by the trustees at the time their action was taken, nor for some months thereafter.

The committee is, however, not unmindful of the fact that the desirability of these restraints upon the intervention of lay trustees in the details of the management of the edu-

*See Appendix B.

tional and scientific work of a university is as yet by no means universally recognized; and that members of the governing board of the University of Pennsylvania may have conceived it to be their duty to form their personal opinions as to the fitness of candidates for reappointment upon such evidence as came to their knowledge from any source, with no strong presumption in favor of the acceptance of the official recommendations of the representatives of the educational staff. Trustees holding such a view of their responsibilities would not necessarily, it is evident, act otherwise than conscientiously in voting, upon the basis of the impressions gained by them, to disregard such recommendations. The committee cannot, however, hold that the view referred to is in conformity with a correct understanding of the procedure which should be followed in such cases, and of the responsibilities of faculties in matters of this kind. As has been pointed out in the general report of this Association's committee on the subject, the issue of academic freedom concerns not only the grounds or motives for dismissals or removals of university teachers, but also the procedure followed in dismissals or removals, and the definite recognition of faculty responsibility in relation thereto. It is for this reason that the fact that the trustees' action in the case of Dr. Nearing was a rejection of the recommendations of the department of economics and the Dean of the Wharton School, and of the reported judgment of the majority of the faculty of that School, has seemed to the committee to constitute, of itself, a *prima facie* indication that the question of academic freedom is involved in the case.

b. A group of facts tending to throw light upon the causes of Dr. Nearing's removal, is that for three years preceding it an influential group of alumni had been conducting a campaign against certain (unnamed) "younger teachers" in the Wharton School, among whom Dr. Nearing was generally understood to be one of those most aimed at; that the official *Alumni Register* had been active in this campaign; that the

objections to those teachers were expressly based upon what was described as the "unsound," "bizarre," or "radical" character of their teaching on economic and social questions; that those who took part in this campaign went so far as to contend that professors should not express themselves, "however modestly" upon controversial economic, social or political questions, on the ground that their doing so was sure to be misinterpreted; that this campaign culminated in a demand in May, 1915, by the Alumni Committee on the Wharton School, that the trustees dispense with the services of instructors in economic subjects who were "unwilling to subscribe to" the policies which it was declared that the University should support; and that in this campaign at least one member of the Board of Trustees participated.

Some examples of these attacks upon the "younger teachers" of the Wharton School may be cited, chiefly from the academic year preceding Dr. Nearing's removal. In its issue of October, 1914, in an editorial entitled "Masters," the *Alumni Register* said:

We cannot praise too highly the aim of the Provost to secure men for the faculty of distinguished ability and reputation—and to urge upon the Trustees more strength in promptly casting out the fads and fancies emanating from those of immature and unproved attainment, which can only lower the University's reputation in the world of sound scholarship.

In its issue of January, 1915, the *Register* contained an editorial comment entitled "Turning the Faculty Upside Down" in which it was remarked: "The bizarre and radical theories often advanced by enthusiastic young instructors are likely to have a poor effect upon Freshmen." Dr. Nearing, it is to be noted, had charge of the Freshman course in economics in the Wharton School.

The number of the *Register* for May, 1915, contains an appreciative article on "The Board of Trustees" by Mr.

William J. Serrill, an alumnus of the class of 1883. In the course of it Mr. Serrill writes:

The question of academic freedom, which is puzzling the authorities of all the universities and colleges, is claiming a large share of the thought and attention of the Board. Shall the University maintain, in any of the fields of thought, any standard or standards controlling the nature of the instruction given to the students, or shall the members of the teaching force be free, without any other restrictions than those imposed by their individual judgments, and the provisions of the libel laws, to speak, teach and publish what they wish? The difficulties in establishing such standards, and the objections to placing any restrictions, are well known. The question is, however, one which the Board cannot afford to dismiss and ignore. To these gentlemen are intrusted the property of the university, the useful expenditure of its income, the provision for the continuance of an adequate income. The responsibility for the direction of these vast forces into useful channels is on them, and it cannot by any means be evaded or shifted to the faculty or elsewhere; it is indissolubly joined to the power of the purse. Just as it is easy for any one to be liberal in spending other people's money, so it is easy for those of us on whom no burden of responsibility rests to preach the doctrine of unlimited license. Our Board is known to be keenly alive to this vexed question; its action in recent cases shows a decided tendency to be liberal. We of the alumni may be happy in the thought that in its hands this subject will suffer neither from neglect nor from unwise decision.

An editorial comment on Mr. Serrill's article contains these sentences: "The Trustees have been lightly accused by some in the now disappearing popular vein. They have proved their capacity, they are ready to prove their courage if needs be."

An editorial in the issue of May, 1915, relates to the reports of the alumni committees which have power to visit the several departments of the University, "to confer with the professors and faculty thereof on all matters that may

tend to improvement, or be advisable for the correction of errors," and to make recommendations to the Board of Trustees, subject to the approval of the directors of the Alumni Association. The editorial urges that the Trustees adopt "a more receptive attitude towards these reports."

Now, the reports of the Alumni Committee of the Wharton School had for two years been pressing the trustees to make such readjustments in the staff of the School as might be necessary to prevent "unsound" teaching in economics. The report presented in May, 1914, signed by the chairman, Mr. Thomas S. Gates, of the class of 1893, contained the following:

The course of Economics, which deals in a measure with the distribution of wealth, has, upon several occasions been the subject of much criticism and perhaps misrepresentation. The course itself is apparently carefully revised, and the lectures are so arranged as to fall well within the realm of a scientific handling of an intricate and difficult subject. It has occurred to the committee that such difficulties in this and other courses, which come so near the firing line, might be avoided by a slight rearrangement of the curriculum and the assignment of work of this character to the more mature and better seasoned instructors, in whose hands, perhaps, the same criticism would not be aroused.

In conclusion your sub-committee desires to lay stress upon the importance of the Wharton School problem and the fact that, at the moment, that importance is not apparently appreciated. The School exists and grows because of a well-seasoned public demand for sound teaching along certain well-defined lines.

The report of the same committee presented in April, 1915, went farther, and in the following passage definitely urged the dismissal of teachers whose utterances "tended to arouse class prejudice" and seemed to the committee to contain "fallacious conclusions."

To the admirable and efficient administration of the Dean of the Department, there is, however, one discordant note, *viz.*, the

tendency on the part of a certain element in the teaching staff to seek publicity by discussion of various public topics in a manner which is likely to arouse class prejudice and fallacious conclusions, based upon a biased attitude of mind and often an imperfect representation of the facts. Such public utterances, coming as they do under the cloak of the authority of the University of Pennsylvania, have subjected the institution, and particularly the department from which they emanate, to severe and just criticism. The committee has noticed, moreover, a tendency to carry these impressions into the class room, by certain inquisitorial examinations into the social conditions surrounding the homes and families of the students. Obviously such departures as these from the scheme of instruction which the department rightly represents, form no part of its policy, and should, the committee respectfully represents, be controlled by the Dean as the head of the department. The committee takes this occasion to place itself on record as squarely opposed to the use of the fair name of the University as a point of vantage for utterances foreign to the scheme of its teaching and ideals in education, and recommends that where such members of the teaching staff are not willing to subscribe to its policies, their services should be dispensed with.

This report was unanimously approved by the Board of Directors of the General Alumni Society of the University, at a meeting held on April 9, 1915, and was transmitted to the trustees. In the May number of the *Alumni Register* there appeared a letter in commendation of the report, signed "J. G. R., '52 C," which the committee is informed are the initials and class of one of the senior members of the Board of Trustees. This letter animadverted upon "the abuse of a place in the University faculty by men who spread false doctrines and arouse class prejudices and fallacious conclusions;" and it declared that much of the good aimed at by the founder of the Wharton School "is lost when men holding teaching positions in the School introduce there doctrines wholly at variance with those of the founder and go before the public as members of the Wharton School faculty and representatives of the University, to

talk wildly and in a manner entirely inconsistent with Mr. Wharton's well-known views and in defiance of the conservative opinions of men of affairs."*

Immediately after the dropping of Dr. Nearing, a group of thirty-three Philadelphia alumni, including a number of prominent members of the bar of that city, issued a public statement in defense of the trustees' action; this statement implied that that action was due to the considerations set forth in the above mentioned report, and observed also:

The right to freedom of speech, restrained by common sense and common decency is a right to be cherished, and it is a right that has never been trenched upon or abridged by the University of Pennsylvania. There are certain recognized limitations of this right; we know of no better statement of them than that made by Professor Schelling in his recent commencement address at the University. [Quotation omitted.] The rules which Professor Schelling so stated were clearly violated in and out of the University by Dr. Nearing, whose intemperate, persistent and astonishing expressions of untested theories, and whose unrestrained condemnations of institutions and rules which form the basis of civilized society, passed the most generous bounds of freedom of speech allowed by any institution, and gained for Doctor Nearing a notoriety and discredit which reflected upon the University. The alumni could not fail to perceive this situation and many of them have thought the trustees were slow in severing a connection that subjected the University to continual criticism.

Thus—to recapitulate this group of facts—we see a long continued effort on the part of a number of alumni of conservative views to use pressure, of various sorts, to prevent the expression, by "younger members" of the Wharton School faculty, of teachings which those alumni regarded as unduly radical; we see these efforts becoming increasingly aggressive, and eventuating in 1915 in a formal recommendation, in the report of an official alumni committee, that

*This letter is given in full in Appendix C.

teachers who continued to express such views should be dismissed; we find this report unanimously approved by the directors of the General Alumni Society; we find it, and with especial emphasis, the sentence containing this recommendation, endorsed in an open letter by a member of the Board of Trustees; we find the dismissal of Dr. Nearing actually accomplished, within little more than a month after the appearance of this letter; and, after the event, we find a large group of alumni, having more or less close professional, business or personal relations with trustees, pointing, in their explanation of the dismissal, to the "untested" character of the "theories" expressed by Dr. Nearing in his discussions of social questions.

These facts seem to lead naturally to the inference of a causal connection between the removal of Dr. Nearing and the antecedent circumstances which have been mentioned. They, at least, point so forcibly to such a connection, that the Board of Trustees must assuredly have been aware that their action would give rise to the belief that the grounds for it were those foreshadowed in the alumni committee's report and the above mentioned letter; and any body of men who were seriously solicitous to prevent that belief from gaining currency would naturally, if in a position to do so, have accompanied their action with a specific statement, showing that that action was based upon other grounds—and would have welcomed any subsequent opportunity to prove that the belief in question was unwarranted. The unwillingness of the trustees, at the time of the removal, to make any such statement, lent to the group of facts just reviewed a still greater significance. Those facts, though they rendered it improbable, did not render it impossible, that the Board's decision not to reappoint Mr. Nearing was uninfluenced by the objections to the character of his economic teachings which had been so emphatically urged by alumni. But the improbability was greatly heightened by the Board's failure to assign any other reason for their decision, when the

whole situation obviously made an indication of such reasons (if they existed) imperative.

All these facts taken together—most of them being already matters of public record—seemed to your committee to constitute serious *prima facie* evidence of an infringement of academic freedom, and therefore to make it incumbent upon the committee to proceed to an investigation of the case. They also made it appear natural to expect that, if no such infringement had occurred, the authorities of the University would welcome every opportunity to make the facts apparent, and would therefore be likely to afford the committee assistance in its endeavors to go behind the *prima facie* evidence and ascertain all the circumstances which might throw light upon the matter. It is, of course, also to be noted that, in addition to the question of freedom of teaching, the case manifestly involved the issue of the proper protection of the personal interests of academic teachers—inasmuch as Dr. Nearing was dropped from the Pennsylvania faculty in the middle of June, without prior notice, and after having had abundant reason to suppose that his appointment would continue.

II

Preliminary steps towards an investigation were taken, prior to the appointment of the special committee of five, by the chairman of the general Committee on Academic Freedom and Academic Tenure, who, on June 28th, addressed the following letter to the Provost of the University of Pennsylvania.

DEAR SIR:

As you doubtless know, it is coming to be a widely accepted principle, that the members of the university teaching profession are entitled to be informed as to the conditions affecting tenure of the professorial office in any of the American universities. It is the custom of the Committee on Academic Freedom and Academic Tenure of the American Association of University Professors, which I have the honor to represent, whenever these conditions are called into question in the case of any university, to endeavor to ascertain the facts, so that they may be made known to the profession at large. Public report, and statements made by members of the Association connected with the faculty of the University of Pennsylvania, seem to indicate that the dropping of Professor Scott Nearing from the faculty of the University took place under circumstances which make it advisable for the officers of this Association to ask that you will be good enough to give them some further information respecting the incident. The circumstances to which I refer, and the questions to which they give rise, are as follows:

I. We are informed that Mr. Nearing was recommended for reappointment by the Dean of the Wharton School, with the concurrence of the faculty of that school; and that Dean McCrea and most of his colleagues are of the opinion that Mr. Nearing had a competent acquaintance with his subject and was one of the most skillful and stimulating teachers in the School. It would therefore appear that, in the opinion of those best qualified to judge, there was no serious objection to Mr. Nearing on the ground of his professional qualifications. It has, on the other hand, been

publicly charged that the reason which led the Board to reject the recommendation of the Dean of the Wharton School, and to terminate Mr. Nearing's connection with the University, lay in the character of his teaching on social, economic, or political questions. In view of these circumstances, the officers of this Association venture to hope that, in order that they may correctly understand the situation, you will be so good as to inform them upon the following points:

1. Are the above statements as to the action of the Dean, and the faculty of the Wharton School correct?
2. If so, was the character of the teaching of Mr. Nearing upon social or economic questions the reason, or a contributory reason, for the action of the Board of Trustees in declining to adopt the recommendation for Mr. Nearing's reappointment?
3. If this was not the reason, what were the reasons which determined the Board of Trustees to this action?

II. We are also given to understand that Mr. Nearing received no intimation that he was not to be reappointed, until the end of the university year—that is, at a time when positions for the ensuing year in other universities have for the most part been filled. I shall therefore be greatly obliged if you will also advise me as to the following questions:

1. Is it the rule at the University of Pennsylvania, in the case of assistant professors, that the decision as to their reappointment is not made, or made known, until Commencement time?
2. If not, for what reason was the rule departed from in the case of Mr. Nearing?
3. Is it to be understood that the Board of Trustees of the University may at any time take action similar to that taken in the case of Mr. Nearing, at so late a date in the academic year?

While I regret that I am obliged thus to trouble you with these inquiries, I am sure you will share our feeling that the conditions of professorial service in any institution are matters in which the profession at large has some concern; and that it is in every way desirable for the University also, that the facts concerning the incident which has given rise to so much regrettable controversy should be fully and authoritatively made known.

Though I have ventured to suggest specifically the matters which seem most significant from the point of view of this Associa-

tion, we shall be most grateful for any further comment which you may care to make.

It is understood that any reply which you may be good enough to send will be communicated for the information of the University teaching profession, and will be duly brought by this Association to the notice of members of the profession.

With high regards, I am

Very truly yours,

EDWIN R. A. SELIGMAN.

Provost Smith replied on July 6:

MY DEAR PROFESSOR SELIGMAN:

I have your letter, with inquiries, of June twenty-eighth. In reply I would say that the letter will be presented to the Corporation of the University. Any answer which it may make will be sent to you.

Yours sincerely,

EDGAR F. SMITH.

Since the Corporation did not meet until October, no further steps in the inquiry could be taken during the ensuing months. As is generally known, the case continued throughout the summer to arouse an unusual amount of public interest and discussion; and the action of the trustees received widespread criticism, in which members of the University of Pennsylvania faculty took part. A request for a statement of the reasons for Mr. Nearing's dismissal was sent the trustees by a number of members of the teaching staff of the Wharton School; and at a later date a memorial signed by some sixty of the University faculty, protesting against the action taken in the case, was presented to the trustees. In this memorial four points were chiefly emphasized: first, the lack of notice given to Dr. Nearing; second, the lack of consideration given to a faculty recommendation; third, the lack of opportunity given Dr. Nearing to answer any charges against him; and, fourth, the infringement of academic freedom which appeared to be involved. At

the beginning of the University year the Wharton School Association, composed of students of the School, appointed a committee to make inquiries of the trustees about the matter; and a petition signed by some 1500 students was presented, asking for Dr. Nearing's reinstatement.

Moved, doubtless, by this agitation and these requests, the Board of Trustees at its meeting of October 11, unanimously adopted two resolutions, which, by its direction, were communicated by its Secretary to Professor Seligman, in lieu of a reply to his inquiries of June 28th. The first resolution, offered by Mr. Wharton Barker, was as follows:

Because a university has three duties to perform:

1. To aid students to acquire knowledge of information heretofore gathered.
2. To make investigation in every department of human knowledge without restriction.
3. To cause publication of the results of this investigation both within and without the university:

Resolved, That the Trustees of the University of Pennsylvania adopt and declare as an adequate expression of their views and purpose the statement of Thomas H. Huxley upon his installation as Rector of Aberdeen University in 1874:

“Universities should be places in which thought is free from all fetters, and in which all sources of knowledge and all aids of learning should be accessible to all comers, without distinction of creed or country, riches or poverty.”

The second resolution, introduced by Mr. Effingham B. Morris, was the following:

In order to avoid misunderstanding of the position of the university toward freedom of academic opinions, speech, teachings and public discussions, by members of its faculties, this minute is entered upon the records of the board of trustees.

Under the original charter and statutes of the university, the trustees are charged with the duty and responsibility of selecting and appointing fit persons as professors, to instruct students. Because of the decision of the board at its last meeting not to renew

Dr. Scott Nearing's contract of employment as an assistant professor in the Wharton School—which expired by its term at the end of the academic year—an assumption has been made and circulated that this action indicated a policy to restrict or to prevent free academic discussion. This belief is unwarranted. Indeed nothing could be further from the truth.

The trustees have not only always recognized fully the right of members of the teaching staff to give proper expression of individual views upon all questions, but there is not and never will be the slightest wish on the part of the board or of a single one of the trustees to restrict the broadest latitude of opinions, research and discussion. When individual opinions of members of the teaching staff are expressed in a proper manner, upon proper occasions, and with proper respect for the dignity of their relationship to the university, and their consequent responsibility to the institution, such opinions and utterances are welcomed as indicative of progressive growth—no matter how divergent they may be from current or general beliefs.

It is not only impossible, but most undesirable, for any board of trustees to lay down definite rules for the guidance of members of any teaching staff. It would be a sad commentary upon the noble profession of teaching if any university should think a necessity existed to attempt to do so. If a teacher's own conception of the extent of his responsibility to young students, and his own realization of the importance given to his words by the mere fact that the university has commissioned and trusted him to teach, and has conferred upon him the right to use her name in addressing either students or the public, is not sufficient of itself to impose upon him discretion, dignity, fairness, truth, courtesy, sober-mindedness and consideration for differences of opinion, then manifestly any other form of restraint will be futile.

In order to discharge the duty laid upon the board by the charter, the trustees are required to observe and determine the qualifications of prospective teachers before appointing them as professors. The usual routine is an engagement as instructor, an advance to an assistant-professorship, followed—if justified—by appointment as professor. Dr. Nearing followed this usual course. He was found to have an attractive personality and many good qualities as a teacher. During the entire period of the few

years in which he was connected with the university, however, his efforts,—although doubtless perfectly sincere—were so constantly misunderstood by the public and by many parents of students that, much to the regret of the trustees, they felt unable to give him the promotion to a professorship which he would otherwise have obtained.

The termination of his temporary engagement was, therefore, absolutely in the line of the duty laid upon the trustees by the charter and in justice to Dr. Nearing himself, who was thus free to employ his talents in fields not circumscribed by either requests or promises to avoid strife and turmoil, which are neither necessary nor desirable accompaniments of the objects for which young men are sent to college by their parents.

When an individual teacher's methods, language, and temperament provoke continued and widespread criticism alike from parents of students and from the general public, who know him only by his public utterances, the freedom of choice in selection of some other person is a right equally as inherent in the board of trustees, legally charged with its exercise by the charter, as is the right of freedom of opinion and thought and teaching in the faculties. And this duty must be exercised for the good of the university as a whole.

The responsibilities of the governing body of any university as laid down in its charter are not confined to the care of its financial and material necessities. A selection or choice of an individual teacher is in itself no possible foundation for a just charge of restriction of academic freedom of speech, and, is of course, no indication whatever of a purpose to effect changes in the present teaching staff.

An expression of its views on this subject made by the board in a somewhat lighter vein some months ago—which it was hoped and supposed was all that would be necessary—is now reaffirmed. It is accordingly again inserted in the minutes, and in connection with this statement indicates the cordial feelings of friendship, admiration, and respect felt by the trustees as a body and individually for the members of the faculties of the University of Pennsylvania, upon whose untiring and efficient labors the welfare of the institution depends.

Adopted by the Board, January, 1914, and now reaffirmed:

"In all universities professors habitually express themselves freely upon questions which interest or divide the community. It could never seriously be suggested in any college or university in this country to stifle or control freedom of thought or expression by professors. In a large teaching staff of several hundred men, such as exists at the University of Pennsylvania, occasional unwise utterances are, of course, inevitable, but they do little harm.

"It is natural for some of the younger teachers to take themselves and their opinions upon social or economic questions more seriously than is warranted by the extent of their practical experience. It is only the passage of years which leads discreet professors, as well as other workers in the world, to be tolerant of the opinions of other students of life as it exists.

"Infallible wisdom cannot be expected to hover continuously over the chairs of all professors, any more than over all board rooms of trustees, or over all newspapers or any other offices. Differences of opinion must always exist. But if sanity and good temper and sober-mindedness are kept in view by all persons concerned—trustees, professors, students and public—there will seldom be any occasion for criticism, and none at all for an outcry on behalf of liberty of opinion and freedom of speech at the University of Pennsylvania."

These resolutions were transmitted by the chairman of the general Committee on Academic Freedom to the special committee of inquiry which had by that time been constituted.

With these facts and documents before it, the committee accordingly addressed a series of inquiries to the Provost of the University and the members of the Board of Trustees, chiefly for the purpose of ascertaining the interpretation which the Board desired to have placed upon the above resolutions, certain passages of which seemed susceptible of more than one interpretation. The committee also made inquiries as to the procedure followed by the Board before taking final action in the case of Dr. Nearing. The Provost was good enough to inform the committee as to the general

administrative practice of the University in the matter of reappointments and the like, but declined to answer the questions bearing directly upon the case of Dr. Nearing. Replies were received from only one member of the Board of Trustees, Mr. George Wharton Pepper—to these reference is made elsewhere in this report—who was, however, careful to disclaim authority to speak for the Board. The inquiries were, however, also brought before the Board as a body on December 13th. The Secretary of the Board thereupon wrote the committee to the effect that the Trustees believed that they had sufficiently stated the reasons for the action of June 14, and their general attitude upon the question of academic freedom, in their resolutions of October 11.

The committee deeply regrets the reticent attitude thus assumed by the Board as a body. The principles and methods of official action of the governing body of a university are not private matters, but are in a high degree affected with a public interest. To the general reasons for a full and frank statement of the facts in all such cases there were added, in the present instance, the special considerations that the removal of Dr. Nearing had aroused an unprecedented measure of interest and concern among both the academic and the general public, and in other countries as well as our own; and that the widespread belief that his removal was a violation of academic freedom was certain to do serious injury to the influence and the good name, not only of the Wharton School and the University of Pennsylvania, but even, in some degree, of American universities in general. To the inquiries of the representatives of this Association a still further consideration was pertinent. It is manifestly reasonable that the University teaching profession at large should expect to be informed as to the conditions of service and tenure in any university; and it is equally evident that those conditions can be most adequately judged of, not from an institution's rules and declarations, but from the actual practice of its governing body and its administrative officers.

The committee has, however, found it possible with the evidence at its disposal to reach a conclusion upon the three main questions, the answers to which must necessarily determine the committee's decision as to whether the case presents an infringement of academic freedom. These questions are:

1. Was the character of Dr. Nearing's social or economic teachings the cause, or a contributory cause, of the discontinuance of his appointment?
2. Was the procedure followed in his case such as to afford him an opportunity to present evidence concerning the correctness of any charges or complaints made against him; and, in general, was it such as to provide a judicial hearing, before the Board of Trustees or any other body?
3. Were the grounds of the action taken with respect to him approved by, or submitted for report to, his professional colleagues on the faculty, especially those in his own and cognate departments?

The evidence on which the committee bases its findings on these questions consists of the longer of the two resolutions adopted by the Board on October 11, taken in conjunction with the facts presented in the first part of this report and with certain other facts known to the committee from other sources of evidence, hereinafter to be mentioned.

1. The resolution referred to, like the briefer one adopted on the same date, expressed sentiments with respect to freedom of teaching with which all will, no doubt, heartily agree; and it declares that "there is not now and never will be the slightest wish on the part of the Board or of a single one of the trustees to restrict the broadest latitude of opinions, research and discussion." The purpose to maintain the fullest measure of freedom within the University of Pennsylvania could hardly be more broadly or forcibly expressed than in these words. But in the only sentences of the resolution which explicitly assign reasons why the Board decided upon "the termination of the temporary engage-

ment" of Mr. Nearing, the grounds specified are that: "during the entire period of the few [i.e., nine] years in which he was connected with the University, his efforts—though doubtless perfectly sincere—were constantly and continuously misunderstood by the public and by many parents of students" and that his "methods, language and temperament" provoked "continued and widespread criticism alike from parents of students and from the general public who knew him only by his public utterances."

Taken in their natural sense, these sentences manifestly give, as the reason for Mr. Nearing's dismissal, not a disapproval of Mr. Nearing or his teachings by the Board itself, but the criticisms and complaints of persons outside the University—parents of students and other persons "who knew him only by his public utterances;" and the statement further expressly declares that Mr Nearing's "efforts" were "misunderstood" by these persons. Your committee is unable to find in the reason thus assigned any sufficient justification for the action taken; nor is it able to reconcile this passage of the resolution with the declaration of intention to maintain "the broadest latitude of opinions and instruction." The language of the passage, in other words, seems clearly to assert that Mr. Nearing failed of reappointment because of criticisms outside the University, arising at least in part from his extra-mural utterances—criticisms which the trustees not only refrain from expressly endorsing, but which they assert to be based upon misunderstandings.

The committee, furthermore, is informed, by replies to questions courteously given by one member of the Board, Mr. Pepper, that the Board neither made any inquiry nor caused any to be made by the Provost or the Dean, "to determine whether these persons outside the University had been correctly informed as to what Mr. Nearing's utterances were; whether they had correctly understood those utterances; and whether their criticisms were, in fact, in the

judgment of the trustees, justified by the character of the utterances in question;" also that the Trustees did not, "at or before their meeting of June 14, 1915, take measures to ascertain how extensively the parents of students in the University took exception to Dr. Nearing's utterances." To the question whether the Trustees took any measures to ascertain "whether or not such objections as were made were due to dissent from the political, social, or economic opinions expressed by Dr. Nearing in his extra-mural public addresses" Mr. Pepper answers:

The Trustees were entirely satisfied that the objections to Mr. Nearing were due to his way of saying and doing things, and not to the fact that he held certain or uncertain opinions. He would have been just as impossible if he had chosen the rôle of a religious bigot or a reactionary politician.

The committee accepts this statement as conclusive, with respect to the motive actuating this member of the Board in his vote against the retention of Mr. Nearing; but it does not find that the evidence bears out the assertion that the objections to Dr. Nearing's utterances made by persons not members of the Board—which the Board as a body officially declares to have made necessary its own action—had no reference to the content and tendencies of those utterances. The most important spokesmen of those objections, and the ones to whom the Board had most reason to give heed, were the alumni whose views were voiced by the *Alumni Register*, by the Board of Directors of the General Society of Alumni, and by the Advisory Committee on the Wharton School. In the case of these gentlemen, as has already been noted, the objections made referred expressly to the alleged tendency of Mr. Nearing's utterances to "arouse class prejudice," and to the fact that his "conclusions" were, in the opinion of the objectors, "fallacious." And, as has also been noted, shortly before the meeting at which it was voted to terminate Mr. Nearing's connection with the University, a trus-

tee, in endorsing the objections of this group of alumni, based them upon the divergence of the teachings of the instructors attacked from "the conservative opinions of men of affairs." Further evidence that the criticism of Dr. Nearing was based upon his economic views, and in part upon misunderstandings of those views, is furnished by an article of Dr. J. William White, a trustee of the University, published in the *Philadelphia Public Ledger*, on Sunday, October 3, 1915. In this article Dr. White makes the following statement:

I found, long before this year, that sober-minded, sensible persons, had received from Dr. Nearing the strong impression that he advocated the ruthless redistribution of property; that he believed in the personal iniquity of those who lived on incomes derived even from their own savings; and that he thought that the alternative of work or starvation should be presented even to the old, the feeble, and the diseased. I knew that my sensible friends had misunderstood him, but the fact that they had been given the opportunity to do so made me even more doubtful of his fitness to represent the University before the public as one of the chosen expounders of the principles of economics. When such incidents multiplied as years went on, and persons whose good-will and respect for the University seemed to me important were so affected as to lead them to say sometimes angrily, sometimes sorrowfully, that they could not let their boys be exposed to such influences, and—when I tried to convince them of this mistaken view of Dr. Nearing—said: "I know, because I heard him myself," I realized that it had become my duty as a trustee to consider whether his influence on the whole was helpful or prejudicial.

The committee also notes that, in March, 1915, certain letters of complaint against Dr. Nearing were received by the Provost and laid before the Board; and that these letters were described as follows in a letter written to the Provost on April 5, 1915, and subsequently made public, by Mr. Wharton Barker, a trustee—one of the minority who at the June meeting voted for the reappointment of Dr. Nearing:

The letters, four I think, you placed before the Board of Trustees of the University of Pennsylvania, appear to be charges of economic heterodoxy, rather than of ecclesiastical heterodoxy.

Your committee therefore finds, with respect to the first of the three above-mentioned questions:

A. That the Board of Trustees, in the only statement which it has, as a body, given in explanation of its action of June 14, 1915, declares explicitly that its decision not to retain Dr. Nearing was made necessary by the criticisms of him, and the antagonistic attitude towards him, of persons not members of the Board, including persons who knew him only by his public (i.e., his extra-mural) utterances.

B. That much of this outside criticism, and, in particular, the most weighty and important part of it—that which came before the Board shortly before its June meeting with the official endorsement of the Alumni Committee on the Wharton School and the Directors of the General Society of Alumni, and with the published individual endorsement of one of the Board's own members—was unmistakably based upon objections to the character of Dr. Nearing's social and economic teachings, or what the objectors supposed to be his teachings.

These two facts alone would compel your committee to conclude that the action of the Board of Trustees, in relation to Dr. Nearing, constituted an infringement of freedom of teaching in economics in that University.

2. With respect to the second of the questions above mentioned, that relating to the procedure observed in the case, the committee finds that the Board took no adequate means to ascertain whether the outside criticism which it declares to have been responsible for its action was based upon any adequate acquaintance with Dr. Nearing's utterances or any correct understanding of them, or how extensively the parents of students took exception to these utterances; and that he was given no opportunity to present evidence to the

Board or any of its committees, as to the character or occasions of his public utterances, or as to the correctness of prejudicial statements made concerning him.*

This committee is unable to regard this as suitable or equitable procedure in such a case. As has already been remarked, refusal of reappointment to an office with respect to which a strong general presumption of reappointment obtains, and in the case of a teacher who has been clearly recommended thereto by his department and by the Dean of his School, must be regarded as tantamount to a dismissal. And the procedure in dismissals should always be of a judicial character; that is, it should be based upon definite charges, should provide for the careful verification of the facts, and should assure to the teacher against whom complaint is made a hearing and an opportunity to present his defense. As a matter of courtesy, also, the official or officials chiefly responsible for the recommendations to reappoint should be heard by the Board. These requirements were clearly not fulfilled by the extremely summary procedure of the Board of Trustees of the University of Pennsylvania on June 14, 1915.

3. The answer to the third question which has been set down above has already been made evident, and is not, indeed, a matter of dispute. Not only was Dr. Nearing afforded no trial by his colleagues, but the complaints made as to his utterances were in no manner laid before any faculty body for report either as to their pertinency as grounds for removal, or as to the truth of the allegations concerning the actual character of those utterances. On the other hand, it was well known that Dr. Nearing's immediate official superiors and a large number of his colleagues disapproved of such action as the Board, nevertheless, proceeded, without further inquiry or consultation, to take. Nor has the

* These statements are based upon replies to questions bearing on these points, given by Mr. G. W. Pepper (already cited), by Dean McCrea, and by Dr. Nearing.

Board been led to reconsider its action with respect to Dr. Nearing by the subsequent formal protests of the Wharton School faculty, and of many members of the general faculty. This failure to recognize that a matter of this sort is one upon which the faculty is entitled to be consulted, and the consequent complete and continued disregard of the views of the educational staff of the University, appears to your committee to be a feature of the case little, if at all, less serious than the two upon which the committee's opinion has already been given.

The attitude of Dr. Nearing's colleagues seems to the committee also decisive—especially in view of the lack of any judicial inquiry by the Board into any of the alleged facts—with respect to certain charges made since Dr. Nearing's removal by some individual members* of the Board—charges that he has, on various occasions shown in his utterances a lack of discretion, taste and courtesy, sufficient to justify his dismissal. The Board has not, in its official explanation, made any clear statement as to its acceptance of these charges or referred to any specific instance of this kind. The committee would, in any case, hold that upon a question of this general sort, the most competent judges must be presumed to be—in an institution of good standing—the colleagues and immediate superiors of the teacher concerned. For what has been maintained by those who have made these charges is not merely that on some specific occasions Mr. Nearing's utterances were impulsive and de-

*By Dr. J. William White, in his newspaper article already referred to, and by Mr. George Wharton Pepper, in his replies to this committee. Mr. Pepper, in answer to a question, writes: "My own opinion, to which I have no right to commit the Board, is that among his characteristics are sensationalism in the treatment of subjects which require grave consideration, execrable taste in selecting the occasion for utterances likely to give offence, and that kind of youthful exuberance that leads a man to conclude that what this weary world is waiting for is frequent *ex cathedra* utterances from him." Mr. Pepper adds: "I think at different times I have had knowledge of a score of incidents" [of this kind].

ficient in balance and good taste; it is maintained that upon the whole his influence was rather prejudicial than helpful, that he was, in the words of one trustee, a "liability" rather than an "asset." Upon such a question those may best decide who are intimately associated in professional duty with the man concerned, who are in a position to observe both him and his work constantly and at close quarters. The committee does not believe that either itself, or a board of lay trustees avowedly influenced in its judgments by the complaints and "misunderstandings" of persons outside the University, is likely to be equally competent to pass judgment upon a matter of this kind. And the expressions of the judgment of Mr. Nearing's superiors and nearest colleagues—some of whom dissent from many of his views and frankly criticize some of his utterances—appear to be neither equivocal nor perfunctory. The head of his department, Professor Patten, makes the following statement to the committee:

Dr. Nearing has been my assistant for several years. He is an efficient, energetic teacher, a man of rare personal magnetism. I have never seen a teacher who could handle a large class more efficiently than he does. He has also organized the readings and records of the Freshman class so that the standing of its four hundred or five hundred members can be readily ascertained, and thus deficient students may be discovered and helped. There have been no complaints about his teaching. In the present controversy his efficiency has never been called in question. There have been a few charges of injudicious statements to students, but these on examination have proved to be false. This class I taught for many years, and it is still under my supervision. I have been very careful to follow the work so as to keep the whole group, teacher and quizmasters, in line. There is an outline of each lecture, and everything about the class is open to inspection. I feel sure that there is nothing about this course open to objection, nor do I think any facts can be brought forward to show any indiscretions on the part of Dr. Nearing in class or within the walls of the Wharton building. He

has a moral enthusiasm that raises him above criticism. The opposition to him is based on extramural statements in churches, teachers' meetings, and before other high-grade audiences. He never indulges in street oratory. The audiences he has chosen are those any conservative teacher would gladly elect. They have been small groups of earnest men and women eager for knowledge and earnest in action. These latter points relate to the general rights of teachers to impart to the public the contents of their science, and should be judged accordingly. As to his teaching and University activity, I can give him a clean bill of health.

SIMON N. PATTEN.

In a previously published statement Professor Patten has said: "In losing Dr. Nearing the University loses one of its most effective men, a man of extraordinary ability, of superlative popularity, and a man who, to my mind, exerted the greatest moral force for good in the University. He has the largest class in the University, and no one could have done his work better." Dean McCrea, as already noted, gave official evidence of his judgment by recommending Dr. Nearing for reappointment and increase of salary. At the time of the dismissal he said: "Scott Nearing is an efficient teacher, an influence for good in personal relationships with students and colleagues, and an able and helpful administrative associate." Dr. C. L. King of the Wharton School faculty declared at the time of the dismissal: "There is not a man on the University faculties anywhere whose motives are cleaner, whose ideals are higher, both as a teacher and as a student, than Scott Nearing. His personal contact with the students invariably left an impress for good. As a teacher, he was one of the greatest assets of the University of Pennsylvania, and has long been so. His loss to the Wharton School would be irreparable." Similar expressions have been employed by a number of other former colleagues of Mr. Nearing.

Your committee is unable to consider that such judgments as these are outweighed by the impressions, avowedly de-

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rived in great part at second-hand, of trustees who are neither teachers nor economists by profession, and who, being busy men of large affairs, are not intimately acquainted with the daily work of the University or with the man concerned.

SUMMARY OF FINDINGS

The findings of the committee with respect to the case of Dr. Nearing may, for the reader's convenience, be recapitulated as follows:

I. As to the procedure followed by the Board of Trustees in its action with reference to this member of the University faculty, the following facts are established:

1. The position held by Dr. Nearing was one carrying a definite presumption of reappointment, in case of satisfactory service.

2. It was duly made known to the Board of Trustees by the department of economics and by the Dean of the Wharton School that Dr. Nearing's service was regarded as satisfactory; and he was expressly recommended for reappointment. The Board was also informed by the Dean that this recommendation had the substantial support of the Wharton School faculty.

3. This recommendation of the qualified representatives of the educational staff of the Wharton School was rejected by the Board of Trustees on June 14 without further consultation with those representatives, without reference of the case for judicial inquiry to any faculty committee, and (originally) without assignment of reason.

4. The Board's own action on June 14 was not judicial in character. No opportunity for a hearing upon the charges or criticisms made against him was afforded Dr. Nearing; nor did the Board conduct any inquiry on its own account to ascertain whether the persons outside the University, by whose criticisms the Board declares its action to have been determined, had been correctly informed as to Dr. Nearing's utterances or had correctly understood them, or whether their criticisms were, in fact, justified by the authentic language of the utterances in question.

The committee holds that such procedure provides no proper safeguard for academic freedom; that it gives the individual academic teacher no adequate security against substantial injustice; and that it secures to the faculty or its representatives no sufficient voice in relation to questions of reappointment and removal.

II. As to the grounds or causes of the action of the Board of Trustees in refusing Dr. Nearing reappointment, the two following facts are established, and appear to the committee decisive.

1. The only statement of reasons which the Board as a whole has officially given, declares this action to have been made necessary by the attitude taken towards Dr. Nearing by persons outside the Board, including some who knew him only by his public utterances.

2. The most important representatives of such an attitude of disapproval and antagonism towards Dr. Nearing were a group of alumni of conservative views, whose criticisms had been repeatedly voiced in the *Alumni Register* and in the reports of the alumni committee on the Wharton School. The objections of these, as of certain other known critics of Dr. Nearing, were expressly based, at least in part, upon the character of his economic opinions and the content of his utterances upon social questions.

The committee is accordingly compelled to conclude that at least a contributory cause of Dr. Nearing's removal was the opposition of certain persons outside the University to the views, upon questions within his own field of study, expressed by him in his extra-mural addresses. Removal or refusal of appointment, wholly or partly upon such a ground, without judicial inquiry by any committee of fellow-economists or other scholars, the committee can only regard as an infringement of academic freedom.

III

The above constitutes your committee's report on the matter originally submitted to it. The case has, however, as the members of this Association doubtless know, had a sequel which is of general interest to members of the academic profession. It seems advisable that some record of and comment upon this should be included in the present report.

On December 20, 1915, the Board of Trustees of the University of Pennsylvania adopted an amendment to the statutes of the University modifying in several important respects the regulations previously in force with regard to the tenure of teaching positions, the procedure in the dismissal of professors, and the like. The new statutes read as follows:

(1) There shall be four grades in the teaching staff: (a) professor; (b) assistant professor; (c) instructor; (d) assistant.

(2) Before any reappointments or promotions of members of the teaching staff shall be made, the trustees shall request the group of instruction of which the appointee is, or is to become, a member to make a recommendation. The recommendation shall be given careful consideration by the trustees, and, if approved by the provost and the board of trustees, shall be followed. In the event of the non-approval of any such recommendation, or in the event that no recommendation shall be made, the provost and the board of trustees shall proceed to make such reappointments or promotions as their judgment approves. In all cases in which the board of trustees shall feel it to the interest of the University, they shall in like manner request the advice of the proper group of instruction in reference to original appointments.

In exceptional cases, where loss to the University of the services of a man of recognized ability might follow delay in his appointment, the same may be made by the provost and board of trustees without prior consultation with or recommendation of the group of instruction of which he would become a member.

(3) A professor shall be appointed for an indefinite term.
(4) An assistant professor shall receive a first appointment for a term of three years. Subsequent reappointments shall be for the terms of five years each.

(5) Instructors and assistants shall be appointed for a term of one year.

(6) The foregoing appointments shall respectively cease at the expiration of the several terms mentioned, unless notice of renewal shall have been given by the provost in writing, in case of instructors and assistants, not later than the first day of April preceding the expiration of the academic year for which the appointment was made, and in the case of an assistant professor, at least one academic year before the expiration of the term for which the appointment or reappointment was made. In the event of a decision by the trustees not to continue an appointment or reappointment of an assistant professor, or to remove the professor or assistant professor as hereinafter provided in paragraph 7, leave of absence may be given to such professor or assistant professor by the trustees for one year with full salary. All appointments are subject to the regulation covering the retiring age.

(7) A professor shall be removed, an assistant professor removed or refused reappointment by the board of trustees, only after a conference between a committee consisting of one representative from each of the faculties in the University (such representative being chosen by the faculty of which the representative is a member), and a committee of equal number from the board of trustees, at which conference the provost shall preside, and upon a report of such conference to the board of trustees, for consideration and action by them.*

* Section 7 as originally adopted, and as hitherto published in the press, left some room for question whether the procedure which the section specified was meant to be followed in cases of refusal of reappointment of assistant professors. Through a professor of the University of Pennsylvania who is a member of the Council of this Association, the Committee on December 28 brought this possible ambiguity to the notice of Provost Smith, and received the assurance that no adverse action would be taken in the case of assistant professors recommended for reappointment "until after a conference between a committee of nine from the teaching staff and a like committee from the Board of Trustees." By subsequent action the Board has amended the language of this section to read as above.

It will be noted that the concluding section embodies an important principle which has already been enunciated in this report: that refusals of reappointment to teachers recommended by the proper faculty bodies or officials should be put upon the same footing as dismissals, and should require the same procedure. The committee feels justified in regarding the adoption of this rule as implying a recognition of the unsuitability of the procedure followed in the case of Dr. Nearing.

It is doubtless well that the nature, extent and advantages of the changes introduced into the practice of the University of Pennsylvania by these new statutes should be exhibited in a concrete fashion by an indication of the way in which the present rules would have affected the case of Dr. Nearing, if they had been in force in June, 1915.

(a) Dr. Nearing would (if he had similarly been promoted in 1914) have held a three-year term, and could not have been dismissed before the end of that term without the procedure provided for in clause 7. Hitherto assistant professors have held one to three year terms. The change is manifestly a desirable one. Apart from the other changes, however, it does not greatly alter the University's previous practice. As the committee is informed by Provost Smith, there has hitherto been, even in the case of assistant professors holding one year terms, an almost conclusive presumption of continued reappointment, in case of satisfactory service,—*i.e.*, in case of continued recommendation for reappointment by the department and faculty concerned. In practice, in other words, the terms of assistant professors have in the past, during satisfactory service, been much longer than three years. And, on the other hand, it is doubtless to be assumed, in the absence of any express provision to the contrary, that the previously recognized presumption of continuance, at the expiration of terms of appointment, will continue to hold in the future.

(b) Dr. Nearing would also—if the new regulations had

been in force six months earlier—have received a full year's notice that his appointment was to terminate, instead of being dismissed at the end of the academic year, wholly without notice. This provision constitutes a notable improvement upon the previous practice of the University of Pennsylvania. It will do much to increase the security and dignity of the office of assistant professor in that University, and thus to render the academic career there more attractive. That ample notice should in all such cases be given is indeed an obvious requirement of ordinary fairness; but it is a requirement which in not a few other universities also has hitherto failed to receive due recognition.

(c) In accordance with clause 2 of the new statutes, the group of instruction of which Dr. Nearing was a member would have made to the Board of Trustees a recommendation concerning his reappointment, and this recommendation would have been "given careful consideration by the trustees." This clause appears to provide for a somewhat more formal procedure than was followed in Dr. Nearing's case; it would not, however, have significantly changed the situation, so far as the matter of the recommendation was concerned. As has already been noted, Dr. Nearing was formally recommended by the Dean of his School, with the approval of his "group of instruction" and the reported, though not formally expressed, concurrence of a majority of the faculty of the School; and while the action that followed was unduly informal and without sufficient consultation with those concerned, it cannot fairly be supposed that the Board gave no serious consideration to the recommendations of these officials.

(d) The most important and substantial change made by the new regulations is that contained in paragraph 7. If this had been in force a year ago, Dr. Nearing could have been refused reappointment only after the question had been submitted to a joint committee consisting of the Provost, nine trustees, and elected representatives of the nine facul-

ties of the University, and a report from this committee had been laid before the Board of Trustees as a whole.

This provision, which, of course, applies also to dismissals of teachers of full professorial rank,* seems to your committee to be of much significance and value, as a recognition of the general principle—already insisted upon in this report—that in matters of this kind university faculties should have a voice; and as providing definitely for conference, in certain junctures, and therefore for the possibility of a better understanding, between faculty and trustees. The recent difficulties at the University of Pennsylvania seem to have been largely due to a failure, on the part of the trustees, to recognize this principle and to a consequent failure to take reasonable account of the judgment of the educational staff. This failure has in the past not been peculiar to the University of Pennsylvania. In many American institutions of learning, little consideration has been given to the proper adjustment and correlation of the work of the two bodies; and the result has frequently been confusion, friction and manifold detriment to the educational interests of the institutions concerned. The functions of faculties and boards of trustees, in the maintenance of the work of a university, are distinct, but are closely interrelated; and close and cordial coöperation between the two—such as can be assured

*It should, however, be remarked, that the bearing of this new rule upon assistant professors is more important than its bearing upon professors of full rank, for the reason that, in the case of the latter, a considerable safeguard against summary removal was already provided by the following article of the University's charter, dating from 1791: "No professor or officer of the faculty shall be removed by a less number than two-thirds of the members present at any meeting of the board, the members present to be at least thirteen; and due and timely notice of such intended removal shall at all times be given, and no person or persons shall at any time be removed at the same meeting in which such removal shall be proposed." If the expression "professor or officer of the faculty" applies to assistant professors, the procedure in the removal of Dr. Nearing was apparently in violation of the charter. The expression, however, has not been so construed by the Board, and the point does not seem to have been conclusively settled at law.

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only by the regular practice of consultation upon all important questions of policy and by direct comparison of views and problems—is of the highest importance to the welfare of any university or college. Your committee therefore records this new legislation of the trustees of the University of Pennsylvania with much satisfaction, and with the belief that it is of good augury for the future of the University.

Since the adoption of such definite rules of orderly procedure for cases of removal and dismissal, by so important an institution as the University of Pennsylvania, seems not unlikely to afford an example which will be followed by other universities and colleges, the committee feels it incumbent upon it to note that the regulations above cited might be still further improved by two or three modifications or additions; and that, in particular, they do not fully conform to the recommendations of this Association's General Committee on Academic Freedom and Academic Tenure. These recommendations had not been published at the time of the adoption of the new statutes; the lack of exact correspondence between the two plans is therefore not surprising, nor need it be regarded as implying any fundamental disagreement respecting the principles to be realized. It is with a desire to offer constructive suggestions, and in the hope of contributing to the eventual attainment by the American universities of the best possible rules of just procedure, in cases which in the absence of such procedure are likely to give rise to injurious controversies, that this committee notes the particulars in which regulations such as have been recently drawn up for the University of Pennsylvania seem capable of further advantageous modification.

(1) The general report of the Committee on Academic Freedom and Academic Tenure contains the following declaration:

Every university or college teacher should be entitled, before dismissal or demotion, to have the charges against him stated in

writing in specific terms and to have a fair trial on those charges before a special or permanent judicial committee chosen by the faculty senate or council, or by the faculty at large. At such trial, the accused should have full opportunity to present evidence.

The procedure provided for by the amended statutes of the University of Pennsylvania differs from that recommended by the Committee on Academic Freedom and Academic Tenure in three respects:

(a) It is not expressly provided (though it is not precluded) by the statutes that dismissal proceedings shall be judicial in spirit and method, being based upon definite charges communicated in writing to the teacher concerned, affording every reasonable opportunity for a fair hearing, and being held before a committee of men selected especially for their judicial qualities. This principle, however, seems to your committee not less important than that of faculty participation in such proceedings.

(b) The committees which are to consider proposed dismissals and refusals of reappointment are not faculty committees, but are to be composed of equal numbers of trustees and members of the faculty, together with the Provost. It appears to the committee, however, that—in spite of what has been said above about the general desirability of conference between faculty and trustees on questions of policy—in the trial of a scholar upon charges, at least if they be charges relating to his scientific standing or to the propriety of his professional conduct, or if there is any *prima facie* ground for believing the question of freedom of teaching to be involved, it is important that the case be heard, in the first instance, by a judicial body composed wholly of members of the academic profession, and that this body formulate its judgment separately and independently.

(c) Under the present statutes of the University of Pennsylvania the conclusions reached by the joint conference committees are not final, but are subject to reversal by the Board of Trustees as a whole. But even if the trustees

conceive it to be unsafe to leave to a committee representative of the faculty of the University the trial of dismissal cases, it would yet be a nearer approach to an ideal arrangement if the decisions of the joint committee of faculty and trustees—acting in a judicial capacity, and after due hearing of evidence—were regarded as definitive.

(2) Aside from the considerations just mentioned, it seems to the committee questionable whether the proposed composition of the faculty part of the joint committee is the best that could be devised for the purpose contemplated—or is such as can be recommended for imitation by other institutions which may be considering the adoption of some similar plan. No provision is made in the new statute for giving special weight, in the consideration of alleged grounds for dismissal, to the judgment of representatives of the science in which the teacher affected is a specialist. But in many cases—and especially in those in which it is alleged that academic freedom is at issue—the real or nominal charge may be that of scientific error or incompetency or of departure from the methods and spirit of the scholar in opinion or utterance. It is not evident that the validity of such charges, when brought, for example, against an economist or a philosopher, can be judged by representatives of law, medicine, dentistry or engineering quite as well as by economists or philosophers. In the present high degree of specialization of scientific work, the contrary is likely to be the case. It is to be desired, therefore, that some arrangement be made for eliciting the definite judgment of the fellow-specialists of the teacher accused, and for giving to this, if not a decisive, at least a preponderant, weight. This last could be done either by creating differently constituted committees for each class of cases, or (if the plan of a fixed joint committee be adhered to) by providing that recommendations, with respect either to reappointments or proposed removals, of the groups of instruction immediately concerned, shall be reversed only by a two-thirds or three-fourths vote of the joint committee.

While, therefore, the changes made do not provide for all that is desirable or requisite, they constitute, in themselves, a very substantial improvement; and they are still more noteworthy by reason of the general purpose and spirit of which they appear to afford evidence. The committee would, therefore, in conclusion, express its gratification that the Board of Trustees of the University of Pennsylvania has gone thus far towards the adoption of principles of official action and methods of official procedure, the needfulness of which has been clearly shown by the regrettable incident upon which it has been your committee's duty to report.

Respectfully submitted:

ARTHUR O. LOVEJOY, *Chairman*,
Johns Hopkins University.

DAVIS R. DEWEY,*
Massachusetts Institute of Technology.

HENRY W. FARNAM,
Yale University.

FRANKLIN H. GIDDINGS,
Columbia University.

ROSCOE POUND,
Harvard University.

*While not dissenting from that portion of Part III which discusses the new statutes of the University of Pennsylvania, I prefer to withhold my judgment as to the procedure it is advisable to adopt.—DAVIS R. DEWEY.

Extract from Report of General Committee on Academic Freedom and Academic Tenure:

The general committee has advised the committees of inquiry upon questions of principle and of method and procedure, but it has not, as a body, participated in the investigations of facts, and the committees of inquiry alone are responsible for their respective findings of fact. The general committee has, however, examined these special reports and, accepting the findings of the sub-committees upon questions of fact, has approved their conclusions.

The Committee:

E. R. A. SELIGMAN, *Chairman*,
Columbia University.

CHARLES E. BENNETT,
Cornell University.

J. Q. DEALY,
Brown University.

RICHARD T. ELY,
University of Wisconsin.

HENRY W. FARNAM,
Yale University.

FRANK A. FETTER,
Princeton University.

F. H. GIDDINGS,
Columbia University.

CHARLES A. KOFOID,
University of California.

ARTHUR O. LOVEJOY,
Johns Hopkins University.

FREDERICK W. PADEFORD,
University of Washington.

ROSCOE POUND,
Harvard University.

HOWARD C. WARREN,
Princeton University.

U. G. WEATHERLY,
University of Indiana.

APPENDIX A

Some question has been raised, since this report was first presented, as to the attitude of the faculty of the Wharton School towards the recommendation of Dr. Nearing for reappointment. A member of the Board of Trustees of the University, in a letter to the chairman of the Committee (March 13, 1916), writes: "The general impression that the reappointment of Dr. Nearing was recommended to the Trustees by the Faculty of the Wharton School is a misapprehension. It would not have been possible to obtain such recommendation. He received the recommendation merely of men of his own group." The evidence which appears to the Committee to substantiate the statement upon this point made in the text of the report, consists of the following letters of Professor Patten and Dean McCrea.

January 6, 1916.

"DEAR PROFESSOR LOVEJOY:

"In regard to the question you raise as to the recommendation of the Department of Economics that Dr. Nearing be reappointed, it is difficult to make a statement because the division of the Wharton School into departments is rather a matter of tradition than of University ruling. In one sense the whole Wharton School may be looked upon as a department of economics, and under the old régime that was the legitimate title for the whole school. It is, however, clearly recognized as a matter of internal administration that there are a number of departments in the Wharton School. In that sense economics is distinct from transportation, accounting, commercial law, insurance, and other subjects. Each group has its own meetings, and makes its own decisions.

"There was no formal recommendation of Dr. Nearing's reappointment by our Department, but there was a clear understanding that we were all heartily in favor of such action. It was well known throughout the University that it was my earnest desire that such a reappointment should be made. If the Department of Economics is to be understood in the narrower sense there is no question but that your statement that 'Mr. Nearing has been strongly recommended for reappointment by the Department of Economics' is the exact truth. I would advise no change in your final statement.

Sincerely yours,

SIMON N. PATTEN."

Dean McCrea writes the chairman of the Committee as follows (January 8):

"With reference to your question, let me say that it was clearly understood by me as Dean that Professor Patten and the other members of the faculty of Economics desired the reappointment of Mr. Nearing and that there was not a dissenting voice in this regard. It seems to me equally clear that the Wharton School Committee of the Board of Trustees had the same impression. In fact, I made it perfectly clear to them that my recommendation had the substantial support of the Wharton School Faculty. I never mentioned any possible exception to this viewpoint on the part of any member of our Faculty. I have every reason to believe that this attitude on the part of Professor Patten and the others to whom you refer, was known to the Board of Trustees. The recommendation itself, however, went before the Board of Trustees as the recommendation of the Dean of the Wharton School."

In a subsequent letter, referring directly to the opinion expressed by a trustee as to the attitude of the faculty of the Wharton School, Dean McCrea writes that, in his belief, if a formal vote of the faculty had been taken on the question of recommending Dr. Nearing's reappointment, four or five members would not have favored such recommendation. "Two of these, however, would have joined with the majority of the faculty in urging Nearing's retention, had there been at any time the thought that the Trustees were making an effort to dismiss Nearing." "I think it safe to say this, however," adds Dean McCrea: "in the first instance, before any thought of Trustees' action could have arisen, at least the majority of the faculty would have recommended Nearing's retention."

APPENDIX B

With respect to the recommendation of Dr. Nearing by the Dean of the Wharton School, and the impressions gained by the members of a sub-committee of the trustees in their conference with the Dean (see page 13), the committee of inquiry has before it the following evidence.

(1) Mr. George Wharton Pepper, a member of the sub-committee of trustees states as follows his recollection of this conference:

"At the conference between our sub-committee and Dean McCrea, we understood him to be well aware of Dr. Nearing's limitations and to be by no means enthusiastic in his recommendation of that gentleman for reappointment. At the conference I asked Dean McCrea whether it was not a fact that Nearing was lacking in professorial 'gumption.' He answered to the effect that this was about the fact. One of us also asked him whether Nearing's place would be a hard one to fill, to which he responded that he had already had a man in mind for Nearing's place. On the whole, while he was true to his recommendation that Nearing be reappointed, he gave me the impression that there was ample room for difference of opinion on the merits of the question of reappointment."

(2) Mr. J. Bertram Lippincott, a member of the same sub-committee, on receipt of a letter from Mr. Pepper embodying the above recollection, writes:

"This letter is such a reiteration of exactly what was said that afternoon in the Wharton School Committee that I take the liberty of endorsing it as it is and returning it with my signature."

(3) Mr. Louis Madeira, also a member of the trustees' Committee on the Wharton School, has written (March 23) the following letter to Mr. Pepper which has been by the latter transmitted to the committee of inquiry.

"Referring to your favor of March 22 in relation to the Nearing matter, I beg to advise you that at a meeting of the Wharton School Committee, at which there were present Dr. Smith, Dr. McCrea, Mr. Wharton Barker, Mr. J. B. Lippincott, you and I, Dr. McCrea, in answer to your question whether it was not a fact that Dr. Nearing was wanting in professorial 'gumption,' replied, 'I think that is about it.'

"He further stated in reply to a question by me, that he did not think the course that Dr. Nearing was delivering to the Freshman Class was a proper course for Freshmen, as he considered it much more difficult than the course which he, himself, was delivering to the Seniors; but also replied, in answer to my question, that it was impossible to switch Dr. Nearing over to senior and post-graduate work.

"He also advised us, in answer to a question whether he could get along without Dr. Nearing; that he had in mind some one to take Dr. Nearing's place.

"The impression gained by me was, that while he wished, if possible to retain Dr. Nearing, he would not be very much sur-

prised, nor disappointed, in case he were not retained. I may add that I gained more information in regard to Dr. Nearing's peculiarities from the remarks of Dean McCrea than from any other source."

(4) Mr. Pepper's recollection of the conference having been communicated to Dean McCrea, the latter sends the following statement to the committee of inquiry:

"It is true that I had a very long conference with Mr. Pepper and several other members of the Board of Trustees, in which we intimately went over the merits and demerits of various members of our Wharton School staff, including Nearing. In the course of the discussion of Nearing, I did say that Nearing is impulsive and has not been so tactful as he might be, and that on the other hand he was so good a teacher and so inspiring a man in his dealings with students, that in my judgment the preponderance of merit was quite strong enough to warrant our retaining him. As a fact, in the last meeting of the Wharton School Committee of the Board, at which Mr. Pepper was not present, the various members of the committee will recall that I was the only one of those in administrative authority who stood out at all for Nearing's retention. I think that my own attitude has been sufficiently clear. I have not been unaware of Nearing's defects or of the defects of other members of our Faculty. I have been at least equally aware, however, of the very strong points in Nearing's favor, and on the basis of these reached the decision that he was a man well worth keeping. I do not recall having said that 'I already have a man in mind for his place.' I may very well have said so, as at the time I had it in mind to take into the department a man who is now doing Nearing's work. Dr. Patten and I spoke of him a number of times as the sort of person who could take Nearing's large Freshman class, if at any time anything should happen to Nearing."

APPENDIX C

The following is the letter referred to on page 18:

"Editor of Alumni Register.

"For years the University has appealed to the alumni for much-needed help. Now that the second report of the united alumni is submitted to the trustees and to the University and the great body of teachers and students, its recommendations are scouted at. The students of the Wharton School protest against those of the Alumni Committee of that Department, and insist on free speech

as the privilege of its faculty. The very temperate recommendations of the Alumni Committee, of which Mr. Thomas S. Gates was chairman, simply called attention to doubtful public utterances on questions of the day, made by members of the faculty of the Wharton School in a manner to invite public criticism of the University for such statements. If the help of experienced alumni is to be of any service, it must be by just such measured judgment as that expressed in guarded and well-weighed terms by the Committee on the Wharton School. Mr. Gates holds an important and responsible position as the head of a great trust company, and his opinion as to the abuse of a place in the University faculty by men who spread false doctrines and arouse class prejudice and fallacious conclusions, well represents the objections of the intelligent public to the utterances for which the University is made responsible. Nobody cares much for itinerant lecturers who seek notoriety by exaggerated statements and appeals to popular passions and prejudices, but everyone really interested in the welfare of the University does object to its name being thus abused before the public.

"Joseph Wharton founded the Wharton School of the University to train men for business. It is unfair that teachers benefited by his generous endowment should forget the directions he gave for carrying out the purposes of his gift. Much of the good he aimed at for students and the public is lost when men holding teaching positions in the Wharton School introduce there doctrines wholly at variance with those of its founder and go before the public as members of the Wharton School faculty and representatives of the University, to talk wildly and in a manner entirely inconsistent with Mr. Wharton's well-known views and in defiance of the conservative opinions of men of affairs. The University suffers in the eyes of its alumni and the public for allowing such abuses. No one wants to restrain the public expression of doctrines and opinions, no matter how much he may deprecate them as unsound, but every right-minded alumnus must endorse the statement made for the Committee on the Wharton School by its chairman, Mr. Gates, that 'it places itself on record as squarely opposed to the use of the fair name of the University as a point of vantage for utterances foreign to the scheme of its teaching and ideals in education, and recommends that where such members of the teaching staff are not willing to subscribe to its policies, their services should be dispensed with.' The reports of the committees of the General Alumni Society on the other departments of the University are all deserving careful considerations of the recommendations made in them. Trustees, professors, deans, even the Provost, with his constant and watchful supervision of the great and growing University, may well accept gratefully the

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help of the alumni and give careful consideration to the report and recommendations of its representatives embodied in this last word. While the University is steadily growing in numbers and strength and importance, it needs the sympathy and support of its alumni and opinions of its committee are entitled to careful consideration. Action on them may well be taken by the authorities of the University after discussion, and thus the alumni may take at Old Penn the important place long since given to those of Harvard and Yale, Princeton and Columbia.—J. G. R., '52 C."